

S.A. v Bell

2023 NY Slip Op 34432(U)

December 14, 2023

Supreme Court, New York County

Docket Number: Index No. 950279/2021

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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S. A.

Plaintiff,

- v -

RICHARD F. BELL,

Defendant.

-----X

INDEX NO. 950279/2021

MOTION DATE 10/27/2023

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for STRIKE SCANDALOUS MATERIAL.

BACKGROUND

Plaintiff brought this action under New York State’s Child Victims Act CPLR § 214-g (“CVA”), seeking redress for a series of alleged sexual assaults perpetrated by Defendant. Plaintiff asserts five causes of action in her complaint: sexual battery, sexual assault, intentional infliction of emotional distress, negligent infliction of emotional distress, and a violation of the Victims of Gender-Motivated Violence Protection Act (N.Y.C. Admin. Code § 10-1101 et seq.) (“GMVPA”).

PROCEDURAL HISTORY

Plaintiff filed her summons and complaint on June 4, 2021. Pursuant to a decision and order dated September 23, 2021, the Court (Silver, J) granted Plaintiff’s motion to proceed pseudonymously.

On August 27, 2021, Plaintiff moved for a default judgment.

On September 29, 2021, Defendant appeared by counsel.

On July 19, 2022, Defendant filed an order to show cause seeking a denial of the motion for a default judgment and permitting Defendant to file an answer.

On July 26, 2022, the Court (Love, J) denied the motion for a default judgment, noting that the 77-year-old Defendant had appeared and citing the preference for cases to be determined on their merits. The Court thereafter declined to sign Defendant's order to show cause holding same was moot based on the denial of Plaintiff's motion for a default judgment.

Defendant's answer is dated July 18, 2022 (NYSCEF Doc # 32) and asserts two affirmative defenses, one pursuant to CPLR § 4545(c), and a second asserting that Plaintiff has failed to mitigate damages.

THE PENDING MOTION

On October 27, 2023, Defendant moved for an order "striking all inflammatory, scandalous, and prejudicial language" in the complaint. Plaintiff filed opposition and the motion was marked submitted on October 22, 2023.

The motion is untimely and fails to identify with specificity the portions or paragraphs of the complaint sought to be stricken. For these reasons, and the others specified below, the motion is denied.

DISCUSSION

CPLR § 3024(b) provides that "A party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading." The statute further provides that said motion must be made within twenty days after service of the challenged pleading, and clearly contemplates that the motion be made prior to the filing of a responsive pleading, as there is a further provision that "... If the motion is denied, the responsive pleading shall be served within ten days after service of notice of entry of the order and, if it is granted, an amended pleading complying with

the order shall be served within that time.” Courts have found that the failure to adhere to the time limit is a proper basis to deny a motion pursuant to CPLR §3024(b). *See eg Lau v. Lungen*, 275 A.D.2d 506 (3d Dep’t 2000) (*holding in dicta motion to strike prejudicial portions of defendant’s answer time-barred properly denied as challenged pleadings served well beyond 20-day limit*).

Here the motion is made two years after the complaint was filed, and one year after Defendant filed his answer. There is absolutely no explanation offered for this prolonged delay in the moving papers, nor is said delay even acknowledged. In cases where the delay has been extensive a motion pursuant to CPLR §3024(b) is properly denied. *See eg Platteau v. Ouarti*, No. 162213/2019, 2022 WL 900391, at *2 (N.Y. Sup. Ct. Mar. 28, 2022)(*as defendant filed this motion nearly two years after plaintiff served the complaint, it is time-barred*).

The court further notes that Plaintiff has alleged that Defendant has persistently refused to engage in discovery, and indeed two years into this litigation it does not appear that depositions have been scheduled. While the court retains discretion to extend Defendant’s time to move under CPLR §3024(b) pursuant to CPLR §2004, the court finds no basis to exercise its discretion to do so given the procedural history and specific facts herein, and Defendant makes no application pursuant to CPLR §2004.

In addition to the prolonged delay in moving for said relief the motion fails to identify with specificity what paragraphs of the complaint it seeks to strike. Instead, the request for relief is framed in general terms. The only reference to the specific language sought to be stricken is in paragraph 6 of the affirmation in support which states:

Continuing with the complaint, defendant is referred to in the following manors:

a. lived a life of impunity, avoiding any consequences of his reprehensible and markedly brazen actions;

- b. part of a scheme employed ... to abuse multiple underage girls;
- c. a broader animus towards women;
- d. a broader pattern of violence towards women;
- e. killed his girlfriend etc.);
- f. pattern of violence against women (etc.); and
- g. a serial abuser of young girl

The use of the term “etc” is insufficiently specific in identifying what language specifically the Defendant seeks to strike, as is the failure to identify the pertinent paragraphs of the complaint. This lack of specificity combined with the unexplained prolonged delay in seeking the relief are fatal to Defendant’s application for relief.

Finally, even assuming *arguendo* the motion had been timely and the language specifically identified, there is a substantive basis to deny the motion in the case at bar.

Courts generally disfavor motions to strike scandalous or prejudicial matter from pleadings. *See Riesenberger v. Sullivan*, 1 A.D.2d 1050, 1051(2d Dep’t 1956). A motion to strike material from a pleading will be denied if the allegations are relevant to a cause of action—even if the matter is scandalous or prejudicial. *See N.Y.C. Health & Hosps. Corp. v. St. Barnabas Cmty. Health Plan*, 22 A.D.3d 391 (1st Dep’t 2005); *Pisula v. Roman Cath. Archdiocese of New York*, 201 A.D.3d 88 (2d Dep’t 2021).

In determining such motions courts consider whether the matter would be admissible at the trial under the evidentiary rules of relevancy, if so, its inclusion in the pleading, does not justify a motion to strike under CPLR §3024(b). *See New York City Health and Hosps. Corp. v. St. Barnabas Cmty. Health Plan*, 22 A.D.3d 391, 802 N.Y.S.2d 363 (1st Dep’t 2005).

Defendant’s prior conviction for killing his girlfriend would be admissible at trial pursuant to CPLR §4513. Additionally, Plaintiff’s fifth cause of action requests relief for violation of the GMVPA. Allegations that the violence was “because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim’s gender.” *See N.Y.C.*

Admin. Code §§ 10-1103-04 are statutorily a part of the claim. Consequently, Defendant’s alleged practice of violence against women or history of abuse of young girls is relevant to showing animus and violence towards women.

WHEREFORE it is hereby:

ORDERED that the motion is denied; and it is further

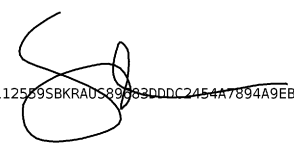
ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that counsel appear for a virtual compliance conference on January 12th, 2024 at 10:00 am.

This constitutes the decision and order of this court.



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12/14/2023
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: